

Residential Tenancies Tribunal

Application 2024-0616-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 21-August-2024 at 9:16 am.
2. The applicant [REDACTED] attended via teleconference on behalf of herself and her co-applicant [REDACTED]. They are hereinafter referred to as the tenants.
3. The respondent, [REDACTED], hereinafter referred to as the landlord, did not attend.

Preliminary Matters

4. The landlord was not represented at the hearing, and I was unable to reach them by telephone at the start of the hearing. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as they have been properly served. The tenant submitted an affidavit (T#1) with their application stating that they had served the landlord with notice of the hearing electronically on 10-August-2024 at 3:30 pm. As the landlord was properly served, and as any further delay in these proceedings would unfairly disadvantage the tenants, I proceeded with the hearing in their absence.

Issues before the Tribunal

5. Should the tenants' claim for a refund of rent be granted?

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).

Issue 1: Refund of Rent

7. The tenants claim for a refund of rent in the amount of \$5741. The tenant testified that this represents the entirety of the rent paid for the premises between when the tenants moved in on 20-December-2023 to the date they vacated on 28-June-2024. Records of these payments were provided (T#2-T#7). Adding these payments absent the security deposit yields a total rent paid of \$5691. I accept the discrepancy as a simple math error.
8. The tenant testified that when they moved into the premises, they became aware there was a leak in the master bedroom. The landlord was also aware, and it was addressed by setting up a bucket which the tenants would periodically empty. The tenant testified that this proved to be inadequate, and the increased dampness led to the growth of mold which impacted the tenants' health and ability to enjoy the property. She said she suffered from headaches, nausea, trouble breathing, and dizziness while in the premises. Photos were provided showing the growth of the mold over time (T#9-T#11, T#17).
9. The tenant also testified that the premises were infested with insects. She said they would find them wherever they looked – for instance, she remembered opening the cutlery drawer to find bugs inside. A photo was provided of one of these bugs as an example (T#12).
10. Eventually, the tenants say the mold problem became so severe that they used plastic covering to physically seal the door to the master bedroom in an attempt to improve the air quality in the remainder of the premises. A photo was provided showing this (T#14). They testified that despite their best efforts, this resulted in little improvement.
11. The tenant testified that they asked the landlord to address the issues in the apartment multiple times, but nothing adequate was ever done. She testified that once a cleaning person attempted to clean the mold off the wall, but that it returned in full within days. On 3-May-2024, a maintenance person attended on the landlords' behalf and removed the interior portion of the mold-infested wall, leaving the underneath exposed (T#15). This revealed that much more mold was growing inside the wall, which the tenants say was extremely damp. The tenants testified that it was this incident which led to them deciding they had to move out for their own health.
12. The tenants provided the landlord with a formal written request for repairs (T#18) on 3-May-2024. This notice requested the remediation of the mold, the repair of the leak, replacement of the fire extinguishers, and the installation of smoke detectors. The tenant testified that the fire extinguishers in the building were empty and there were no smoke detectors in the premises. The repairs were to be completed by 16-May-2024. The tenants say nothing was ever done.
13. Statutory condition 1 from s. 10 of the *Act* requires that a landlord maintain a rental premises in a good state of repair and fit for habitation during the tenancy and comply with laws respecting health, safety, or housing. Based on the evidence in its totality, I am satisfied on a balance of probabilities that the landlord failed to meet this obligation, and compensation is warranted.

14. The tenant testified that the landlord already offered a \$100 per month discount on the rent in compensation for three months. Based on the evidence before me I find this amount inadequate.
15. The tenants were unable to make use of the master bedroom which was part of the rental agreement. Further, the condition of the premises prevented them from peacefully enjoying the rest of the premises to the degree to which they were entitled. Nevertheless, they still had some benefit of the premises during the period which they resided there. A complete refund of rent is inappropriate.
16. I am satisfied on a balance of probabilities that the tenant's ability to peacefully enjoy the use the remainder of the premises were greatly impaired by the landlord's failure to meet their obligation. I adjudge this impairment to be valued at 50% of the rent before the landlord's \$300 discount, or \$2845.50.

Decision

17. The tenants' claim for a refund of rent succeeds in the amount of \$2845.50.
18. The tenants were successful in their claim, and they are therefore entitled to have their reasonable hearing expenses covered. In this case, their expenses consisted of the \$20 application fee and \$25 for the services of a commissioner of oaths. A receipt was provided.

Summary of Decision

19. The landlord shall pay to the tenants \$2865.50 as follows:

Refund of Rent.....	\$2845.50
Hearing Expenses.....	\$45.00
Total.....	<u>\$2890.50</u>

6-September-2024

Date


Seren Cahill
Residential Tenancies Office